

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

Ethiopia



United Nations
Economic Commission for Africa



INTRODUCTION

The African Trade Policy Centre of the United Nations Economic Commission for Africa (ECA) has embarked on a Digital Trade Regulatory Integration (DTRI) initiative with four primary objectives:

- Provide information on digital services trade regulations that could facilitate the negotiation and implementation of the African Continental Free Trade Area (AfCFTA) Protocol on Digital Trade.
- Inform the development of a digital trade integration index that could become a component of the Africa Regional Integration Index.¹
- Inform the addition of African countries to the Digital Services Trade Restrictiveness Index (Digital STRI), as developed by the Organisation for Economic Co-operation and Development.
- Offer a solid basis for further analytical work by ECA and others on digital trade.

The DTRI initiative researches the legal and regulatory environment associated with dig-

ital trade and will help African countries better understand and address barriers to the growth and development of digital trade and e-commerce. Addressing the issues DTRI identifies will help promote digital trade and e-commerce and make it a more plausible choice for commercial transactions between businesses and consumers.

This country profile is based on observations from two datasets developed from the DTRI initiative. The first includes information on restrictions to digital services trade from 2014 to 2021 and is modelled after the Digital STRI. The second covers measures related to digital trade integration, beginning with the effective date of each measure, and reflects the latest available information. The legal and regulatory measures researched are categorized into policy areas in both digital services trade restrictions and digital trade integration, and the results are presented in the corresponding section of the profile. Where policy areas overlap, the profile presents results only once, to the extent possible.

¹ See <https://arii.uneca.org/>.

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This country profile presents the key findings for Ethiopia. Ethiopia has been among the world's fastest growing economies in recent decades, in part driven by public investment in infrastructure. However, growth in gross domestic product has recently slowed, from 6.1 per cent in 2020 to 5.6 per cent in 2021, due largely to Covid-19, slowing growth in industry and services, and internal conflict.² Despite some setbacks, policy reforms including privatization of state enterprises and liberalization of foreign investment have substantially transformed the economy. Though expected to contract 4.8 per cent in 2022, the economy is forecast to grow 5.7 per cent in 2023, driven largely by industry, private consumption and investment, with contributions from rebounding tourism and a liberalized telecom sector.

In 2019, the Ethiopian government launched the Home-Grown Economic Reform Agenda, which is designed to eliminate macroeconomic disparities and lay the foundation for sustainable and inclusive private sector-led growth. Other reform agendas include the 2030 10-year Perspective Development Plan,³ the Ease of Doing Business Medium-term Reform Roadmap,⁴ the Digital Ethiopia Strategy 2020–2025,⁵ the Nation-

al Digital Payment Strategy 2021–2024⁶ and the E-Government Strategy.⁷

Ethiopia's digital economy is at an early stage of development, with few private and public sector players offering digital services. Digital infrastructure, internet penetration and digital literacy rates remain low relative to levels in other countries, posing a potential roadblock to Ethiopia's digital transformation. However, with slow but progressive economic liberalization over the past three decades, government-driven digitalization initiatives and opportunities for the private sector have emerged.

Ethiopia had approximately 29.8 million (25 per cent of the total population) internet users as of January 2022,⁸ an increase of 731,000 users over 2021,⁹ but leaving about 89.5 million people without internet access.¹⁰ On median mobile internet connection speeds, Ethiopia placed 100 out of 142 countries in November 2022.¹¹ For fixed (broadband) internet connection speeds, Ethiopia ranked 170 out of 180 countries.

The Ethiopian government recognizes that the digital regulatory regime is not comprehensive enough to address 21st century

2 See Ethiopia Economic Outlook by AfDB: <https://www.afdb.org/en/countries/east-africa/>

3 <https://europa.eu/capacity4dev/file/109230/download?token=rxippQKh>

4 https://www.pmo.gov.et/media/documents/Improving_Ease_of_Doing_Business_jull23.pdf

5 <https://www.pmo.gov.et/media/other/b2329861-f9d7-4c4b-9f05-d5bc2c8b33b6.pdf>

6 <https://nbebank.com/wp-content/uploads/pdf/news/National-%20Digital-%20Payment%20Strategy.pdf>

7 https://unctad.org/system/files/non-official-document/CSTD_2013_WSIS_Ethiopia_E-Gov_Strategy.pdf

8 <https://datareportal.com/reports/digital-2022-ethiopia>

9 <https://kepios.com/>

10 Covid-19-related issues continue to affect research into internet adoption, so actual internet user figures may be higher than those published. Also, the number of internet users reported here counts unique users; the actual number might be higher as many individuals might use a shared internet connection in public space like internet cafes.

11 <https://www.ookla.com/analysis>

issues and has drafted new legislation covering digital finance,¹² electronic transactions,¹³ digital signatures,¹⁴ communication services¹⁵ and related issues. Proposed regulatory agendas commonly struggle to balance promoting free trade and regional integration with protecting public interest and national security. If too strict, regulation may hinder free trade, innovation, regional integration and growth, especially for startups. But when unregulated, digital trade may lead to violations of basic rights such as privacy and intellectual property rights, exploitation of consumers, proliferation of criminal activities and restricted competition.

Regarding economic integration more generally, Ethiopia is largely isolated from the

rest of Africa and the world. It is not a party to any regional or multilateral free trade area agreements, such as the East African Community, the Common Market for Eastern and Southern Africa free trade area and the World Trade Organization (WTO). The only free trade area that Ethiopia is part of is the newly established AfCFTA. Except for the recent ratification of the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards, the country is also not a signatory to major international conventions on trade, investment and intellectual property. Thus, the regulatory environment for digital trade and regional integration creates barriers, especially for cross-border digital trade.

12 <https://www.aaclo.com/insight/liberalization-of-the-digital-financial-services-to-foreign-direct-investment/>

13 https://www.hopr.gov.et/en/web/guest/laws1/-/document_library/jjvg/view_file/215121?_com_liferay_document_library_web_portlet_DLPortlet_INSTANCE_jjvg_redirect=http%3A%2F%2Fwww.hopr.gov.et%2Fen%2Fweb%2Fguest%2Fflaws1%2F-%2Fdocument_library%2Fjjvg%2Fview%2F209801%3F_com_liferay_document_library_web_portlet_DLPortlet_INSTANCE_jjvg_redirect%3D%252Fen%252Fweb%252Fguest%252Fflaws1

14 http://www.hopr.gov.et/en/web/guest/laws1/-/document_library/jjvg/view_file/35101?_com_liferay_document_library_web_portlet_DLPortlet_INSTANCE_jjvg_redirect=http%3A%2F%2Fwww.hopr.gov.et%2Fen%2Fweb%2Fguest%2Fflaws1%3Fp_id%3Dcom_liferay_document_library_web_portlet_DLPortlet_INSTANCE_jjvg%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26_com_liferay_document_library_web_portlet_DLPortlet_INSTANCE_jjvg_mvcRenderCommandName%3D%252Fdocument_library%252Fsearch%26_com_liferay_document_library_web_portlet_DLPortlet_INSTANCE_jjvg_searchFolderId%3D41632%26_com_liferay_document_library_web_portlet_DLPortlet_INSTANCE_jjvg_searchRepositoryId%3D20181%26_com_liferay_document_library_web_portlet_DLPortlet_INSTANCE_jjvg_keywords%3D10184%26_com_liferay_document_library_web_portlet_DLPortlet_INSTANCE_jjvg_showSearchInfo%3Dtrue%26_com_liferay_document_library_web_portlet_DLPortlet_INSTANCE_jjvg_repositoryId%3D20181%26p_r_p_resetCur%3Dfalse%26_com_liferay_document_library_web_portlet_DLPortlet_INSTANCE_jjvg_folderId%3D41632

15 <https://eca.et/2019/10/01/communications-service-proclamation/>

RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL SERVICES TRADE

To assess the degree of restrictiveness of digital services trade in Ethiopia, an in-depth review of policies, legislation and regulations on digital services trade restrictions was conducted under the five pillars of the Digital STRI:

- Infrastructure and connectivity.
- Electronic transactions.
- Payment systems.
- Intellectual property.
- Other barriers affecting trade in digitally enabled services.

Infrastructure, connectivity and competition

Interconnection refers to links or connections between telecommunication service providers that allow users of one supplier to communicate with users of other suppliers and access their services. Interconnection is key to competition between telecom service providers and is commonly regulated to

promote fair competition and prevent abuse by dominant firms.

Communication Services Proclamation No. 1148/2019 and its implementing directives regulate access to infrastructure and connectivity.¹⁶ Articles 42 and 43 of the proclamation and the Interconnection Directive No. 791/2021¹⁷ obligate telecom service providers to allow for interconnection.

Beyond requiring service providers to provide interconnection, this legislation established the Ethiopian Communications Authority, regulates interconnection fees and processes and requires operators to make interconnection reference offers public. The legislation also requires telecom companies to have vertical (accounting) separation and regulates interconnection prices and conditions. These requirements are meant to create transparency in communication services and protect new entrants from an incumbent or dominant firm.

¹⁶ <https://eca.et/wp-content/uploads/2022/10/2022-06-23T12-21-40.305ZCommunications-service-proclamation-1148-2019.pdf>

¹⁷ <https://eca.et/wp-content/uploads/2022/10/2022-03-24T06-44-44.997ZTelecommunications-Interconnection-Directive-No.-791-2021-English.pdf>

Communication Services Proclamation No. 1148/2019 and its directives do not clearly mandate non-discriminatory internet traffic management. However, Article 11 (1/f) of Telecommunications Quality-of-Service Directive No. 794/2021 prohibits telecom operators from discriminating among customers.¹⁸ Operators are required to provide customers equal access to the same quality of service in accordance with tariffs and quality of service standards.

Until 2021, the government-owned Ethio-Telecom was the only telecom service provider in the country. Ethiopia's previous Investment Proclamation No. 769/2012 reserved the telecom space for the public sector and allowed investment only through a joint venture with the government (Article 6(2/b)).¹⁹ More recently, Investment Proclamation No. 1180/2020 has opened the telecom sector to foreign investment.²⁰ However, the number of new licenses for foreign investors is still limited by the Communication Authority based on Article 6(7) and 19(2) of the Communications Service Proclamation, and special conditions are imposed on foreign investors.²¹ Detailed procedures for getting a license are laid out in the Telecommunication Licensing Directive No. 792/2021.²² So far, only Safaricom (leading an international consortium

of companies called the Global Partnership for Ethiopia) has been licensed to operate in the telecom sector, but preparations are under way to award more licenses and to privatize a minority share of Ethio-telecom (up to 40 per cent).

Despite the entry of Safaricom to the telecom market, Ethio-Telecom remains the dominant service provider in both telecom and mobile money sectors. According to Article 6 of the Trade Competition and Consumers Protection Proclamation No. 813/2014²³ and Article 2 (11) of Communication Services Proclamation No. 1148/2019, Ethio-Telecom can be deemed to have a dominant market position or significant market power since it is the incumbent service provider in all three market segments (fixed, mobile origin and mobile termination). Ethio-telecom has 67.7 million mobile voice subscribers²⁴ compared with about 1 million for Safaricom.²⁵

Although not expressly permitted, restrictions are imposed on communication services, especially the internet and social media sites like Facebook and Telegram. A review of relevant legislation shows that there are no legally prescribed (specific) limitations affecting downloading and streaming. However, during times of conflict, civil unrest and

18 <https://eca.et/wp-content/uploads/2022/10/2022-03-24T06-45-18.069ZTelecommunications-Quality-of-Service-Directive-No.-794-2021-English.pdf>

19 <http://www.ethiopianembassy.org.in/investment/Investment%20Proclamation%20No.769%20of%202012%20of%20Ethiopia.pdf>

20 https://www.investethiopia.gov.et/images/Covid-19Response/Covid-19Resources/June-2/Investment-Proclamation-No.-1180_2020-Copy.pdf

21 <https://eca.et/wp-content/uploads/2022/10/2022-06-23T12-21-40.305ZCommunications-service-proclamation-1148-2019.pdf>

22 <https://eca.et/wp-content/uploads/2022/10/2022-03-24T06-45-04.775ZTelecommunications-Licensing-Directive-No.-792-2021-English-1.pdf>

23 https://chilot.files.wordpress.com/2014/09/813_2013-trade-competition-and-consumers-protection.pdf

24 <https://www.ethiotelecom.et/>

25 <https://www.thereporterethiopia.com/27822/>

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national high school exams, it is common for the government to openly block some social media sites like Telegram or to shut down telecom and internet services.²⁶ When social media websites are blocked, some citizens switch to virtual private networks or leased circuits, which is not expressly prohibited by Ethiopian law.

Since November 2022, communications blackouts have been reported in the Tigray and neighbouring regions.²⁷ Similarly, government authorities imposed a nationwide internet shutdown for several weeks in July 2020 after mass violence followed the murder of prominent Oromo singer and activist Haacaaluu Hundeessaa.²⁸

With no legislation regulating cross-border data flows, data can be transferred abroad without the need to meet any legal requirement. Thus, firms are not obligated to adopt procedures incorporating accountability principles or other procedures safeguarding cross-border data transfers. Ethiopia is not a signatory to the Asia Pacific Economic Cooperation Cross-Border Privacy Rules or the African Union Convention on Cybersecurity and Personal Data Protection. However, a draft proclamation on protection of personal data has been submitted to parliament and is waiting approval.

Despite a lack of specific legislation, Ethiopian law contains provisions applicable to data transfers. For example, the 1995 Constitution addresses the right to privacy of

personal data.²⁹ In addition, the 2005 Criminal Code, Computer Crime Proclamation No. 958/2016,³⁰ and Freedom of the Mass Media and Access to Information Proclamation No. 590/2008³¹ contain provisions on privacy and data security. However, none of the legislation defines personal or sensitive data, leaving these terms up to interpretation. Further, no government authority is charged with protecting personal data or regulating cross-border data flows. These issues are addressed by the new draft proclamation on data protection, which defines key terms, sets up a personal data protection commission, regulates cross-border data flows and makes local presence and registration of databases mandatory.

Ethiopia also lacks a domestic data policy. Some legal obligations exist concerning data retention, but the primary objective is not personal data protection. For instance, Article 24 of the Computer Crime Proclamation No. 958/2016 states that all service providers must retain data disseminated through their computer systems and data related to data processing or communication services for one year. Similarly, Article 29(1) of Electronic Signature Proclamation No. 1072/2018 requires any certificate provider (a business entity that issues digital certificates and provides encryption and time stamp services) to retain custody of any information related to certificate issuance, suspension, revocation or related services for two years.³²

26 <https://clfr.globalnetworkinitiative.org/country/ethiopia/> r

27 <https://freedomhouse.org/country/ethiopia/freedom-net/2021>

28 <https://netblocks.org/reports/internet-cut-in-ethiopia-amid-unrest-following-killing-of-singer-pA25Z28b>

29 <https://www.dataguidance.com/notes/ethiopia-data-protection-overview>

30 http://www.hopr.gov.et/web/guest/document-viewer/-/document_library/z6pb55r24sQP/view_file/36223

31 <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/85148/95161/F104491799/ETH85148.pdf>

32 <https://chilot.me/2020/04/15/electronic-signature-proclamation-no-1072-2018/>

Without a comprehensive legal framework for personal data protection or a government authority delegated with oversight, companies are free to manage data as they see fit. They are not required to appoint a data protection officer or perform a data protection impact assessment. There are also no requirements for registering databases or guiding how to process personal data.

Legislation such as the Computer Crime Proclamation No. 958/2016 obligates businesses to provide direct access to collected personal data when directed by court order. A global report on encryption laws and policies also confirms that an investigatory organ with a court warrant can search or access any computer system, network or computer data when investigating computer crime.³³ Similarly, Article 6 of the Communication Proclamation authorizes the Ethiopian Communication Authority to require any licensee or telecom operator to provide information that the authority reasonably finds to be necessary for the proper performance of its functions and the exercise of its powers.

Electronic transactions and payment systems

Licensing and registration procedures for electronic commerce are key factors in creating a conducive environment for entrepreneurs and attracting foreign investment.

Article 2(12) of Electronic Transactions Proclamation No. 1205/2020 uniquely defines electronic commerce as transactions in goods and services through the internet or other digital information networks.³⁴ However, Article 41 of the law states that e-commerce operators at all levels are just a type of commercial entity and, as such, that all other laws that regulate regular commercial activities, such as the Commercial Code, apply equally to them. Thus business registration and licensing are required to engage in e-commerce, just as they are for any other type of business. There is no special licensing condition or additional authorization requirement to engage in e-commerce.

For foreign firms that want to engage in e-commerce in Ethiopia, the new Commercial Code No. 1243/2021³⁵ and the Commercial Registration and Licensing Proclamation No.980/2016 (as amended by Proclamation No. 1150/2019),³⁶ do not prescribe discriminatory conditions to obtain a license. Article 82(1) of the Commercial Code and Articles 5(1) and 22 of the Commercial Registration and Licensing law state that any Ethiopian or foreign person or company carrying out commercial activities within Ethiopia must be registered and licensed. While this might suggest a requirement to have a local presence to register and be licensed as a trader through an agent or representative, closer examination reveals that a commercial presence is not mandatory. Firms can provide cross-border services

33 <https://www.gp-digital.org/world-map-of-encryption/>

34 https://www.lawethiopia.com/images/latest%20proclamations/1205_2012%20E1%8B%A8%E1%8A%A2%E1%88%8C%E1%8A%AD%E1%89%B5%E1%88%AE%E1%8A%92%E1%8A%AD%E1%88%B5%20%E1%89%B5%E1%88%AB%E1%8A%95%E1%8B%9B%E1%8A%AD%E1%88%BD%E1%8A%95%20%E1%8A%A0%E1%8B%8B%E1%8C%85.pdf

35 <https://chilot.me/2021/10/25/proclamation-no-1243-2021-commercial-code-english-version/>

36 <https://chilot.me/2021/03/06/commercial-registration-and-business-licensing-amendment-proclamation-no-1150-2019/>

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either directly or through a commercial representative or agent. Having a commercial presence is optional.

Online tax registration and declaration for foreign nationals residing outside the host country reduces the cost and time of starting an e-commerce business. However, this option is not available to non-resident service providers in Ethiopia. Federal Tax Administration Proclamation No. 983/2016 requires taxpayers to be physically present and fill out specified forms for registration, assignment of a taxpayer identification number and tax declaration services. Taxpayers are also expected to submit various documents including their ID card or passport and biometric data (for natural persons), which are to be verified by the authority. Therefore, a company residing outside Ethiopia will either need to have a representative appear in person or get a local tax representative to complete the process.

Ethiopia is not a signatory to any international convention on electronic signatures, including the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts, United Nations Convention on Contracts for the International Sale of Goods, Electronic Communications Conventions or the United Nations Commission on International Trade Law model laws on electronic signatures. The only exception is the recent ratification of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, which relates to commercial disputes resolved by arbitration. It is likely, therefore, that national contract rules diverge from internationally accepted standardized rules.

The recently enacted Electronic Signature Proclamation No. 1072/2018 provides equal legal validity and recognition to electronic signatures as to hand-written signatures and regulates related issues such as digital certificates, license to provide certificates and encryption.³⁷ But there is still a lot to do in terms of setting up institutions and creating awareness for the full implementation of the law.

Several laws address the protection of confidential business information, including intellectual property laws, competition law, and criminal and commercial codes. For example, Article 36/6 of Competition Proclamation No. 813/14 requires firms to disclose information that might be deemed a trade secret or confidential when needed for purposes of investigations. Article 43 of the Electronic Commerce Proclamation also states that any person who can access electronic messages, any other written documents or other electronic devices has an obligation to keep them confidential.

Finally, multiple forums and options are available to resolve disputes arising from digital trade: administrative courts, arbitration (under Arbitration and Conciliation Procedure Proclamation No.1237/2021) and internal complaint management procedures under government bodies such as the Communication Authority, Investment Commission and National Bank of Ethiopia. Additionally, Electronic Transaction Proclamation No. 1205/2020 stipulates that e-commerce platform operators should establish a dispute settlement mechanism. Beyond these, the Trade Competition and Consumer Protection Proclamation, the

³⁷ <https://chilot.me/2020/04/15/electronic-signature-proclamation-no-1072-2018/>

Communication Services Proclamation, the Commercial Code and other legislation provide redress for firms that allege harm from anti-competitive trade practices.

Payment systems

There are reports that importers in Ethiopia face difficulty obtaining foreign exchange, particularly for imports of goods for domestic sale.³⁸ The National Bank of Ethiopia (NBE) administers strict foreign currency controls, and even large firms, state-owned enterprises and manufacturing industries face major impediments in obtaining foreign currency. Obstacles are even greater for smaller firms, which face burdensome delays in arranging trade-related payments. Importers must apply for permits and obtain a letter of credit for the total value of the import before placing an order.

Ethiopia has banking and payment system laws that impose restrictions on the use of electronic payment and digital trade. Article 8 of Directive No. ONPS/01/2020 on Licensing and Authorization of Payment Instrument Issuers limits the amount of money that can be deposited or used for transactions via electronic accounts (electronic funds) over given time periods.³⁹ Additionally, Articles 2(19) and 7(1) state that electronic accounts and payment instruments shall be denominated only in local currency. For international fund transfers, Article 6 permits payments instrument issuers to provide inward international remittances

only. Requiring transactions solely in domestic currency bars outward foreign currency transactions. Similar restrictions exist in Directive No. FIS /01/2012 on Mobile and Agent Banking Directive.⁴⁰

Firms engaged in services trade have access to a range of electronic payment methods, such as debit cards, internet banking and e-wallet services. However, various legal restrictions impede access to electronic payment methods, including local currency and bank account requirements and restrictions on international payments from Ethiopia. The absence of credit card services by local banks is another impediment.

No laws (proclamation or directives) regulating banking or payment security refer to international standards such as those codified by the International Organization for Standardization and the International Electrotechnical Commission, Europay/MasterCard /Visa (EMV), payment token or 3D Secure. Furthermore, neither the National Digital Payment Strategy nor the Revised Bank Risk Management Guideline of the NBE explicitly states that the abovementioned international standards are to apply locally.⁴¹

Article 2(25) of Banking Amendment Proclamation No. 1159/2019 adds a new Article 53 to Banking Business Proclamation No. 592/2008 and states that the NBE shall issue directives that prescribe the security standards for commercial banks.⁴² Howev-

38 <https://www.trade.gov/country-commercial-guides/ethiopia-trade-barriers>

39 <https://www.nbe.gov.et/wp-content/uploads/pdf/proclamation/oversight-the-national-payment-system.pdf>

40 <https://nbebank.com/wp-content/uploads/pdf/directives/bankingbusiness/FIS-01-2012.pdf>

41 <https://nbebank.com/wp-content/uploads/2019/04/Rm-Guideline-revised-1.pdf>

42 <https://nbebank.com/wp-content/uploads/pdf/directives/bankingbusiness/banking-business-proclamation-1159-2019.pdf>

er, none of the NBE directives explicitly refers to international standards. Article 26 of Use of Agents Directive No. FIS/02/2020 does state that financial institutions should put in place an appropriate and tested system, but this is a recommendation not a requirement.⁴³ Finally, the directive stipulates that the NBE is responsible for approving security standards. In practice, the security standard of financial institutions in Ethiopia is approved by the NBE with the support of the Information Network Security Agency.

Intellectual property rights

The intellectual property regime in Ethiopia provides inadequate protection, and enforcement remains a serious concern.⁴⁴ Ethiopia is not a signatory to any of the major international agreements on intellectual property, including the Patent Cooperation Treaty. It is a signatory to only three international agreements on intellectual property rights: the Nairobi Olympic Signs agreement, the convention establishing the World Intellectual Property Organization (WIPO) (ratified by Proclamation No. 190/1990) and the Marrakesh Treaty on making printed works accessible in braille and digital audio formats for people with disabilities.

Ethiopia is not a signatory to other major international agreements on trademarks, including the Madrid Agreement and its Protocol.⁴⁵ Therefore, any externally registered trademark will be accorded the same level

of protection as those registered locally only after it is registered in Ethiopia. Once registered in Ethiopia, all trademarks will be protected equally. Foreign firms can have access to national trademark protection either directly or through an agent (representative) in Ethiopia.

Patents are regulated under Inventions, Minor Inventions and Industrial Designs Proclamation No. 123/1995, which assigns equal protection to local and foreign rights holders once the foreign patents are re-registered in Ethiopia.⁴⁶ However, a local representative is required to register a foreign patent.

Copyright protection regulations are similar. As stipulated in Article 3 of Copyright and Neighbouring Rights Protection Proclamation No. 410/2004, a work published, printed or released outside Ethiopia, including films, music or books, can be legally protected in Ethiopia only if it is published or released in the country.⁴⁷ Works created outside Ethiopia and published in Ethiopia within 30 days will also be protected. Otherwise, foreign right holders are not accorded any national treatment since Ethiopia is not a signatory to international conventions on copyrights, including the Berne Convention for the Protection of Literary and Artistic Works, WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty, or the Agreement on Trade-Related Aspects of Intellectual Property Rights.

⁴³ <https://nbebank.com/wp-content/uploads/pdf/directives/fis/fis-02-2020.pdf>

⁴⁴ <https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf>

⁴⁵ https://www.wipo.int/export/sites/www/treaties/en/documents/pdf/madrid_marks.pdf

⁴⁶ <https://www.wipo.int/wipolex/en/legislation/details/5307>

⁴⁷ <https://www.wipo.int/wipolex/en/text/174729>

Articles 5–19 of Copyright and Neighbouring Rights Protection Proclamation No. 410/2004 present all exceptions or limitations to copyright protections. Some current exceptions state that works that are not original or fixed (expressed/written down), as well as ideas or procedures, legal writings and the like are not protected. Furthermore, reproductions of a copyrighted work for personal use are not prohibited. The proclamation does not adopt a common law style open system of copyright exceptions such as the fair use limitation in the US system. In fact, the proclamation seems to stress the importance of protecting copyright and neighbouring rights over the importance of exceptions to protection. The Ethiopian copyright legislation does not adopt the three-step test as provided for in the Berne Convention. The law uses the term “fair practice” rather than “fair dealings” or “fair use,” but overall, the law seems to adopt an exhaustive list of exceptions.

A review of relevant laws finds no government-imposed requirements to disclose trade secrets, including source code and algorithms, and judicial or administrative enforcement measures and remedies are available to enforce such intellectual property rights. In addition, there are also provisional measures, border measures and other administrative measures that can be taken by the Intellectual Property Office or a fed-

eral court. For instance, the right holder can apply to the Federal High Court to stop an alleged infringement at the border.

Other barriers to digitally enabled services

There are no legally prescribed measures for online transactions in Ethiopia, such as mandatory use of local software, encryption technology or country-specific authentication schemes, nor are there mandatory technology transfer requirements, such as mandatory disclosure of source code. Once a service provider has registered and set up operations, there are no regulations that prescribe performance requirements. However, Article 41(4) of Electronic Transactions Proclamation No. 1205/2020, which became operational in June 2020, states that e-commerce operators shall ensure that local products and services constitute at least 50 per cent of their offer. There are also no legally prescribed (specific) limitations affecting downloading and streaming.

A review of laws on advertisement, broadcasting, media and other relevant laws shows no restrictions on online advertising that could restrict digital trade. Online advertisements are largely unregulated compared with ads that are broadcast on television or radio, and this could enable the spread of misleading or false advertisements.

INDICATORS OF DIGITAL TRADE INTEGRATION

This section discusses measures related to the level of digital trade integration in Ethiopia. The regulatory regime of digital trade integration was assessed under 11 pillars:

- Tariff and trade defence on measures applied to intraregional imports of information and communication technology (ICT) goods.
- Public procurement of digital goods and services.
- Foreign direct investment (FDI) for digital trade.
- Intellectual property rights.
- Telecommunications infrastructure and competition.
- Cross-border data policies.
- Domestic data policies.
- Intermediary liability and content access.
- Quantitative trade restrictions.
- Standards.
- Online sales and transactions.

Since the findings for some of these pillars are discussed in the previous section on

Digital STRI, to the extent possible, a duplicative discussion is avoided in this section.

Public procurement on digital goods and services

There are no discriminatory measure that exclude all or selected foreign firms from participating in public bids related to the purchase of digital goods and services by the Ethiopian government.⁴⁸ One of the guiding principles of the Ethiopian Federal Government Procurement and Property Administration Proclamation No.649/2009, as stated under Article 5(2), is non-discrimination among candidates on grounds of nationality or any other criteria unrelated to qualifications. That said, the law gives some preferential treatment to domestic suppliers of goods or services over foreign suppliers. For instance, Article 26 states that some preference margin can be granted for works carried out by Ethiopian nationals and for consultancy services rendered by Ethiopian nationals.

⁴⁸ <https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf>

There are no legal requirements to disclose patents, source codes or trade secrets to win public procurement tenders. It is important to note, however, that Ethiopia is not a member of the WTO and therefore is not a signatory to the Agreement on Government Procurement.

Foreign investment

In recent years, the Ethiopian investment landscape has become more liberalized. However, Investment Proclamation No. 1180/2020 still reserves some sectors solely for government investment or Ethiopian nationals.⁴⁹ Joint ventures between foreign investors and the Ethiopian government or Ethiopian nationals are permitted in certain instances. In these cases, the share of the foreign investor cannot exceed 49 per cent of the share capital of the enterprise. All other areas of investment that are not expressly reserved for the government, Ethiopian nationals or a joint venture with either of them are open to foreign investors.

Articles 3–5 of Investment Regulation No. 474/2020 restricts foreign investors in the following sectors: banking, insurance, microfinance, travel agents and ticket services, transport, media, advertisement and other promotion, postal service, and audiovisual services, including film/music production and distribution.⁵⁰ Additionally, Advertisement Proclamation No. 759/2012⁵¹ and Article 22(1) of Media Proclamation No.

1238/2021⁵² reserve the right to undertake advertising activity to Ethiopian nationals only. Media include organs established to provide news or programs to the public via periodicals, broadcasting service and online media.

In the banking, finance and insurance services sector, only the publicly owned telecom operator (Ethio Telecom) and locally established tech companies have historically been able to get licensed as payment instrument issuers and thus have been able to offer mobile money services. This restriction limited access to payment settlement methods for both consumers and firms. However, new revisions of banking and payment system laws have waived the old restrictions on participation of foreign firms.

Liberalizing Ethiopia's investment landscape to some extent, Directive No. ONPS/01/2020 on Licensing and Authorization of Payment Instrument Issuers allows foreigners of Ethiopian origin (Ethiopian diaspora) to participate in the banking sector by owning minority shares.⁵³ More recently, in December 2022, Ethiopia's Parliament introduced a new law (unpublished) that repeals and replaces Proclamation No. 718/2011 on National Payment System.⁵⁴ The new law (to be published as Proclamation No. 1282/2022) aims to increase effectiveness, control and inclusivity in financial services provision by opening up the digital financial/mobile money sector to foreign in-

49 https://www.investethiopia.gov.et/images/Covid-19Response/Covid-19Resources/June-2/Investment-Proclamation-No.-1180_2020-Copy.pdf

50 https://chilot.me/wp-content/uploads/2021/07/Regulation-No.-474_2012.pdf

51 <https://chilot.me/2012/09/27/advertisement-proclamation-no-7592012/>

52 <https://chilot.me/wp-content/uploads/2021/04/Media-Proclamation-No.-1238-2021.pdf>

53 <https://www.nbe.gov.et/wp-content/uploads/pdf/proclamation/oversight-the-national-payment-system.pdf>

54 See <https://media.licdn.com/dms/document/C4E1FAQGy6AWod3Gfhw/feedshare-document-pdf-analyzed/0/1672315973637?e=1673481600&v=beta&t=fQcKX-oxUMvMo9iW5xFUC-vDUOdE6a9cnhQncj7GGdY>

vestors. These revisions remove restrictions on the participation of foreign firms in the finance sector and are expected to boost digital trade by facilitating payment settlement systems and trade financing.

Additionally, the new investment law prescribes foreign investment screening criteria on minimum capital requirements. To invest in the country, Article 9 requires individual foreign investors to allocate minimum capital of \$200,000 for a single investment project. For a joint venture with a domestic investor, the minimum capital requirement for the foreign investment partner is \$150,000. A capital requirement of this size could prevent small or start-up foreign investors from participating in Ethiopia's digital economy.

Intermediary liability and content access

Electronic Transactions Proclamation No. 1205/2020 defines an intermediary as “a person, who, on behalf of another person, sends, receives or stores such an electronic message or provides other services with respect to that electronic message.”⁵⁵ Article 23 states that an intermediary shall not be held liable for the information transmitted on condition that it does not monitor the online communication, initiate the transmission, select the receiver of the transmission or select or modify the information contained in the transmission. Furthermore, Article 24 states that an intermediary shall not be liable for the automatic, intermediate and temporary storage of an electronic record when the intention of such storage

is to make the onward transmission of the electronic message more efficient to recipients who requested for it. Article 25 provides further protection for intermediaries that provide hosting services by eliminating liability for damages arising from information stored when they were not aware of harm caused or act immediately after becoming aware. Article 26 protects intermediaries such as search engine service providers.

Computer Crime Proclamation No. 958/2016 adopts a safe harbour regime for intermediaries. Article 16 stipulates that an intermediary will not be held liable unless it is directly involved in the dissemination or editing of the content of data that are deemed criminal or it failed to remove or disable access to the content after learning that the content is illegal. Articles 17 and 27 require intermediaries to monitor users' activity, report it to the authorities in some cases or remove or block content deemed illegal or harmful. Article 27 also obligates the service provider to report immediately to the relevant government body any illegal activities committed by third parties using the computer system that it administers.

Quantitative trade restrictions

Importing telecommunication equipment requires authorization by the government. Article 23 of Communication Services Proclamation No. 1148/2019 gives broad powers to the Ethiopian Communication Authority to regulate the importation of any telecommunication equipment. Prior approval of the

⁵⁵ https://www.lawethiopia.com/images/latest%20proclamations/1205_2012%20E1%8B%A8%E1%8A%A2%E1%88%8C%E1%8A%AD%E1%89%B5%E1%88%AE%E1%8A%92%E1%8A%AD%E1%88%B5%20%E1%89%B5%E1%88%AB%E1%8A%95%E1%8B%9B%E1%8A%AD%E1%88%BD%E1%8A%95%20%E1%8A%A0%E1%8B%8B%E1%8C%85.pdf

authority is required to manufacture, import or distribute radio communication and telecommunication equipment that requires the authority's technical efficacy assurance. Article 3 of Proclamation 761/2012 on Telecom Fraud Offences prohibits the import, assembly, sale, manufacture or even use of any telecom equipment without a permit from the government.⁵⁶ Failure to comply is punishable by imprisonment and a fine.

There is no legally prescribed or reported local content requirement related to the production of ICT goods and no export ban or other kind of export restriction that aims to limit the volume of ICT goods or services that can be exported.

There also are no legally prescribed or reported bans on importation of ICT goods and services. There are some import bans on items that can be used for military purposes, but this should not affect commercial goods. The import bans reported by the US Trade Representative *Foreign Trade Barriers* report⁵⁷ or the US International Trade Administration guide⁵⁸ do not include bans on commercial ICT goods or online services.

Online sales and transactions

There is no requirement to have a local domain name to engage in electronic retail in

Ethiopia. Article 5(3) of Electronic Transactions Proclamation No. 1205/2020 assigns to the Ethiopian Communication Authority the powers and functions to administer and manage the “.et” domain name space.⁵⁹ This implies that domain names other than “.et” are not regulated by the authority. Furthermore, Ethiopian Commercial Code No. 1243/2021, which requires share companies to have a website under Article 492, does not force them to use a local domain name.⁶⁰

Article 22(2) of Investment Proclamation No. 1180/2020 allows investors to employ foreigners for top management positions, including chief executive officer, chief operations officer and chief finance officer, as necessary.⁶¹ Furthermore, the Commercial Code, which also governs foreign investments according to Article 8(3) of the Investment Proclamation, does not put any nationality or residency restrictions on appointing manager or members of the board of directors.

Although Ethiopia has enacted Trade Competition and Consumers Protection Proclamation No. 813/2014, which has a section on consumer protection, it was enacted to regulate traditional or non-electronic transactions.⁶² The country lacks a legal framework for fostering online purchases and protecting consumers online.

56 <http://laws.eag.gov.et/Upload/CassationDecisionsDocument/f0fcaa86-7ee1-4295-91a2-13378de3c8c7.pdf>.

57 <https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf>

58 <https://www.trade.gov/research-country>

59 https://www.lawethiopia.com/images/latest%20proclamations/1205_2012%20%E1%8B%A8%E1%8A%A2%E1%88%8C%E1%8A%AD%E1%89%B5%E1%88%AE%E1%8A%92%E1%8A%AD%E1%88%B5%20%E1%89%B5%E1%88%AB%E1%8A%95%E1%8B%9B%E1%8A%AD%E1%88%BD%E1%8A%95%20%E1%8A%A0%E1%8B%8B%E1%8C%85.pdf

60 <https://chilot.me/2021/10/25/proclamation-no-1243-2021-commercial-code-english-version/>

61 https://www.investethiopia.gov.et/images/Covid-19Response/Covid-19Resources/June-2/Investment-Proclamation-No.-1180_2020-Copy.pdf

62 https://chilot.files.wordpress.com/2014/09/813_2013-trade-competition-and-consumers-protection.pdf

CONCLUSION AND RECOMMENDATION

Ethiopia's digital economy is not yet developed, and it is not a signatory to major international agreements on trade, investment, protection for intellectual property and other related issues. This implies the existence of restrictive regulations and practices that pose barriers to cross-border digital trade and integration. That said, Ethiopia is instituting a series of policy reforms that include privatization of state-owned enterprises and liberalization of investment sectors that were previously closed for foreign investors. These measures, coupled with a growing private sector, have focussed the government's attention on digitization, a promising development for the future of digital trade in Ethiopia.

Some legislation that will strengthen digital trade and regulatory integration has already been put in place. For instance, legislation has been enacted regulating digital infrastructure sharing, connectivity, competition, public procurement and dispute settlement. Other new legislation stipulates that no additional registration or licensing requirements or conditions shall be imposed on foreign firms to engage in e-commerce. These regulations will help to level the playing field

for foreign and domestic firms. Legislation protecting intellectual property rights (locally), confidential information and firms operating as intermediaries also exists. And, critically, no legislation exists restricting online advertisement or export of user data.

There are, however, many legal provisions and practices that are restrictive, discriminatory or unfavorable for digital trade and regional integration. In the telecom sector, communications are still dominated by a single service provider, the publicly owned Ethio Telecom, which has only a single, minor competitor, Safaricom. Thus consumers have little choice of service provider. Proclamation 1148/2019 on Communication Services does not expressly prohibit discriminatory internet traffic management. Even though there is no law that clearly defines the right to do so, the government has previously resorted to shutting down communication services (especially the internet) or selected social media websites on several occasions due to political unrest or conflict. This abrupt interruption of communication tools can create uncertainty and seriously affect the profitability or sustainability of businesses engaged in digital trade.

Ethiopia has not yet enacted personal data protection laws. That means that regulating storage, handling and cross-border data flows is difficult. This exposes individuals and organizations to abuses and violations of their rights. The country has not enacted consumer protection legislation for e-commerce.

Ethiopia's laws still reserve some sectors that are relevant to digital trade to Ethiopian nationals, thereby preventing foreign investors from engaging in those sectors.

Based on the strengths and gaps of the regulatory framework laid out in this country profile, the following recommendations are made to improve digital trade and regulatory integration in Ethiopia:

- Allow or license more telecom service providers. This would improve access to digital communication tools, promote better quality service, reward innovation, improve competition among service providers and lower prices for users.
- Revise strict requirements surrounding the import of telecommunication equipment to ensure that regulations focus on equipment that could actually threaten national security.
- Outlaw discriminatory internet traffic management systems.
- Enact laws protecting domestic and cross-border data in a manner that balances public (government), business and individual interests.
- Improve regulations that restrict online payment settlement systems, including those that regulate mobile money. Measures can include raising the ceiling for daily transactions (payments) via mobile/internet banking, starting digital credit services, integrating payment systems and enabling international transactions (payment) for e-commerce.
- Enact consumer protection laws for e-commerce. Existing consumer protection laws lack vital components to protect consumer rights in electronic transaction.
- After careful analysis and stakeholder engagement, consider adopting international standards and agreements on intellectual property rights, contract rules, payment security and data protection.
- Beyond enacting the digital signature proclamation, set up the necessary institutions and create awareness on the use of digital signatures to fully implement the law.
- To create transparency and predictability without compromising national security interests, enact legislation that clearly defines the extreme conditions under which interruptions and restrictions on the use of communication services like the internet or social media sites may be taken, stipulate which government body may take such measures, and identify safeguards to minimize damage to digital trade.
- Facilitate the online delivery of business registration, licensing, tax registration and declaration services. This is especially important for cross-border service providers and e-commerce operators and can improve the ease of doing business.



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